

Maine Revised Statutes
Title 18-A: PROBATE CODE
Article :

§5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION

(a). Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

[1979, c. 540, §1 (NEW) .]

(b). Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney, the court shall appoint one or more of the following: a visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the person to be protected wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the person to be protected. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

[1995, c. 203, §4 (AMD) .]

(b-1). If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person is not already represented by an attorney, the visitor or guardian ad litem shall so indicate in the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon the person's condition. The person to be protected is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person to be protected or the person's counsel so requests.

[1995, c. 203, §5 (AMD) .]

(b-2). The person nominated to serve as conservator shall file a plan which, where relevant and to the extent pertinent information is reasonably available to the nominee, shall include, but not be limited to, how the protected person's financial needs will be met, as well as a plan for the management of the protected person's estate.

[1985, c. 440, §§ 9, 13 (NEW) .]

(c). After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

[1979, c. 540, §1 (NEW) .]

(d). Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court and all parties of record at least 10 days before any hearing on the petition.

[1985, c. 440, §§ 10, 13 (NEW) .]

(e). When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

[1989, c. 858, §3 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 241, §2 (AMD). 1985, c. 440, §§8-10,13 (AMD). 1989, c. 858, §3 (AMD). 1993, c. 652, §§4,5 (AMD). 1995, c. 203, §§4,5 (AMD).

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